# THE COPYRIGHT BILL.

## Statement of the Special Committee of the

# National Piano Manufacturers Association

## of America

## Appointed at the Chicago Convention on

## June 19, 1907.

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On May 31st, 1906, a Copyright Bill was introduced simultaneously in both houses of Congress, being known in the Senate as Senate Bill No. 6330, and in the House as House Bill No. 19853. It was immediately ordered printed in both Houses and referred at once to the Patent Committee of each House, which Committees in turn directed the holding of joint public hearings in the Senate reading room of the Library of Congress at Washington, on June 6th, 1906.

In view of the fact that the Bill was introduced at the very end of the long session of Congress, that it was immediately referred, and that joint sessions of the Committees were held instead of each Committee considering it separately in the customary way, it is fair to assume that it was the intention, to say the least, of the proposers of the Bill to rush it through and enact it into a law during the closing days of the session, before opposition to it could be crystallized, and before Congress had an opportunity to thoroughly understand its provisions.

Some few manufacturers of piano players in New York City, upon reading in the public newspapers of the introduction of the measure,

sent a representative to the sessions of the Congressional Committees; and there were also represented some music roll and talking-machine manufacturers, as well as some Chicago houses.

It developed at the hearings that the Bill which had been introduced had been the subject of conferences for considerably over a year, between the Librarian of Congress and various authors, book publishers, composers, music publishers, etc., but that at no time were the piano manufacturers, the player manufacturers, the music roll cutters or the talking-machine houses notified of these conferences, nor had they any voice in the framing of the Bill. In fact, it was charged that those interests were purposely kept in ignorance of the features of the Bill. The reason given by the Librarian of Congress at the June hearings, for this apparent secrecy, was that he only permitted "those organizations" who were "concerned in an *affirmative* way" to take part in the framing of the Bill. He claimed that he had never heard of the National Piano Manufacturers' Association, although the only revolutionary features of the Bill affected that industry in the highest degree.

The original Bill extended the domain of copyright by giving to the composer or *his assigns* the exclusive right

"To make, sell, distribute, or let for hire any device, contrivance or appliance especially adapted in any manner whatsoever to *reproduce to the ear* the whole or any material

part of any work published and copyrighted after this act shall have gone into effect, or by means of any such device or appliance publicly to reproduce to the ear the whole or any material part of such work."

This is the obnoxious Paragraph "G."

It was contended by the player manufacturers, who opposed this Bill in June, 1906, that this provision was framed in the interests of a certain large concern in this trade, which concern, prior to the introduction of the Bill, had obtained exclusive contracts for a period of thirty-five years with practically all the publishing houses of any importance in the United States, and that, if the Bill became a law, it would give to that large house a complete monopoly of the music roll business, not only as regards new compositions, but as regards those now copyrighted and even those now in the public domain; and it was also contended that if that particular house obtained such a monopoly of the music roll business, it could eventually, because of such control, drive every other manufacturer out of the piano-player industry.

Photographic copies of the contracts were submitted to the joint committees, and they established beyond all doubt the truth of the charges so made. The result of the opposition in June, 1906, was that nothing was done at that session of Congress, but the matter was held over until the short session of Congress, which opened the first Monday in December, 1906.

Immediately on the opening of Congress in December, 1906, the joint sessions of the Committees were again held and consumed the 7th, 8th, 10th and 11th days of December.

It was then shown that the house in question had obtained an exclusive thirty-five year contract with each member of the Music Publishers' Association numbering fifty-two in all, and had obtained similar exclusive contracts with publishing houses not in the Association, so that there were in existence *eighty* contracts in all. That a *monopoly of the music-cutting business* was intended by these contracts was clear, from the fact that they provide in terms that no contract is to go into effect until the manufacturing house mentioned should have obtained a number of contracts satisfactory to itself; and a letter was offered in evidence from that house, notifying one of the contracting parties that it now had obtained a sufficient number of such contracts, thus clinching the monopoly in so far as those contracts could clinch it.

Much was said at these public sessions about the rights of a composer to the product of his brain, etc. The player manufacturers, who opposed this paragraph "G," assured the joint Committees that while they believed that the Copyright Law should not be extended to such devices, still, if a scheme could be devised whereby a royalty could be given to composers, *but whereby everybody would have the right to reproduce upon paying that royalty*, that they, the manufacturers, would

agree to such a Bill. In other words, that what they wanted was a *square deal* and not to be placed in a position where their business and capital could be wiped out by a monopoly.

*This proposition was rejected by the advocates of the Bill.*

After the December hearings were closed, both Committees took the matter under advisement and, on January 29th, 1907, reports were made in both houses of Congress.

The House Committee reported a Bill eliminating paragraph "G," but inserting instead a provision which gave the composer the right to a royalty on *public performances for profit,* provided he had performed certain conditions. *This House Bill is, in the main, satisfactory.*

The Senate Committee, by a divided vote of four to three, reported a Bill through Senator Kittredge, even more stringent in its provisions than the original Bill. It gives to the composer, or his assignee, the following rights:

"To perform the copyrighted work publicly for profit if it be a musical composition on which such right of public performance for profit has been reserved, as provided in section fourteen of this Act; and for the purpose of public performance for profit, and, for the purpose set forth in subsection (a) hereof, *to make any rearrangement or resetting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced.*"

Senators Mallory, Foster and Smoot dissented from this report of Senator Kittredge,

and filed a strong minority report, in which they say as a conclusion:

"We are satisfied that copyrights should not be extended so as to cover mechanical reproducing devices. In the first place, it seems to be a clear invasion of the patent law and fails to observe the line of demarcation that has always been heretofore preserved between the copyright and the patent law. In the second place, we ought not to take such a radical departure, in view of the fact that all the nations which have considered the question have refused to go so far. *Thirdly, manufacturers who* have invested many millions, *relying upon the existing statutes to protect them in their investments, should not be despoiled for the benefit of the few, and, lastly, the public should not be exploited for the benefit of a group who apparently intend and expect to obtain complete control of these industries.* We therefore object to the paragraph in question, which is now contained in subsection (e) of section 1."

Besides this provision, the Bill itself contains some very drastic punishments for infringement. It provides that the plaintiff can recover damages and profits, and also that the defendant may be fined and imprisoned. There is no such provision in the patent law or the copyright law of to-day, and none such has ever been found necessary.

Neither the Bill as reported by the House Committee, nor the Bill reported in the Senate by Senator Kittredge, has been passed by either House; but, from the facts in our possession, we are satisfied that when Congress meets the first Monday in December, *every*

*effort will be made to have Senator Kittredge's bill passed by the Senate.*

We desire to call your attention to the fact that this Bill was originally introduced in Congress after the last meeting of the National Piano Manufacturers' Association held in Washington in 1906, and that both sets of public hearings were had between that meeting and the 1907 meeting.

At the last convention of the National Association, held in Chicago, on June 19th, 1907, this legislation was laid before the meeting and the action of the player manufacturers and others who opposed the Bill was considered. The attitude of opposition was approved, and a special committee, consisting of the undersigned, was appointed to take up the matter with the members of the Association, individually, and also with the trade at large, and to formulate plans for continuing the work which had been theretofore done.

This committee has since then reported its investigations and findings to the Executive Committee of the Association, at its meeting at the Hotel Waldorf on September 23rd, 1907.

It is the united sense of this Committee that the opposition should be continued, to the end that a proper and reasonable copyright bill be passed, and that the above mentioned provisions of the Bill, as reported by Senator Kittredge, should be vigorously contested by every legitimate means, and for the following reasons:

1. There is the very gravest doubt as to whether such an act will be constitutional.

2. It would seem to clearly invade the domain of the patent law.

3. Its effect will be to turn over the music roll business to one concern, which has exclusive long-time contracts with all of the music publishers of any standing in the country.

4. It is easy to see that, if the music roll business is controlled by one concern, it would take only a short time for that concern to drive every other player manufacturer out of business, because—having the exclusive right to cut rolls—that concern could put a prohibitive price on those rolls to its rivals in the player business, or could refuse to sell altogether. Indeed, they could place a notice on each roll they made that such roll could only be used in connection with one of their own instruments. If this Bill were passed, such a proceeding on their part would be legal. It does not need any argument to show that if two players are being sold side by side, the one of which carries a full line of rolls and the other only a very small line, the latter would stand but a poor chance of being sold.

5. In no event would the act redound to the advantage of the man for whose benefit it is pretended the bill was introduced, viz., the composer, because common experience shows that the composer's share has always been the smallest. Should this Senate Bill become a law, it would mean that the price of

perforated rolls to the public would be enhanced possibly a million dollars a year, and of this sum the Music Publishers' combination, and the house to which they have agreed to give a thirty-five year monopoly in cutting music rolls, would receive the lion's share.

6. The passage of the Bill would be the greatest possible detriment to the independent manufacturers of players, who have invested large sums of money in legitimate business enterprises, and have proceeded in strict accordance with the existing law. To pass the Bill in its present shape would practically destroy that capital.

J. WINTER, *Chairman*,
E. S. CONWAY,
H. PAUL MEHLIN,

Special Committee,
National Piano Manufacturers' Association of America.

NEW YORK, November 15, 1907.